

PLANNING STATEMENT

Prepared by

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**Application under section 191(1)(a) of the
Town and Country Planning
Act 1990 as amended.**

**The use for which a certificate of lawful use
is sought is the lawful use of the site as a
separate, independent residential dwelling
house.**

**The Annexe at 65 Pinchbeck Road,
Spalding, PE11 1QF**

May 2022

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1. INTRODUCTION

- 1.1** This Statement has been prepared and submitted by Mark Simmonds Planning Services on behalf of Mr Pite ('the applicant') This application is for a Certificate of Lawfulness under section 191 of the Town and Country Planning Act 1990 (as amended) (the "Act").
- 1.2** This statement sets out the circumstances of the case before the Council for consideration and provides evidence to support the fact that the site has been used continuously as a separate dwelling, the use of which being Class C3, for a period in excess of 10 years. This has been a continuous use, which has been without the requisite planning permission, for a period in excess of 10 years. The effect of this in accordance with the legislation is that the breach of planning control in terms of the C3 residential use, is now immune from any planning enforcement.

2. SITE DESCRIPTION AND PHYSICAL CONTEXT

- 2.1** The Annexe is located at the rear of Mercia Lodge at 65 Pinchbeck Road, Spalding, PE11 1QF. The Annexe has its own separate access, uses its own separately billed services, receives its own post with 'The Annexe' being its postal address and bears all the internal and external characteristics of a family home.





- 2.2 Internally the Annexe provides the usual facilities for a dwelling including a kitchen, dining area, living room, bathroom and bedrooms. The applicant resides in the Annexe as his home and for as long as he has owned both the Annex and Mercia Lodge (2007), he can confirm that he has always known it as a completely separate dwelling to that of Mercia Lodge with its own domestic curtilage and parking area. The applicant has provided a detailed Statutory Declaration which support the use of the Annexe as a separate dwelling, with a use falling under Class C3, for over 10 years.

3. PLANNING HISTORY AND OWNERSHIP HISTORY

- 3.1 H16-0654-21- Change of use of residential annexe to private dwelling separate from host dwelling including minor alterations to boundary treatments- Undecided
- 3.2 From historic communication with the Council's enforcement officer which forms part of the Statutory Declaration, the last permissions for both the Annexe and /Mercia Lodge appears to only give the authorised use of both as offices. This submission confirms that neither appears to have exercised this permitted use for well over 10 years, with both being rental properties and the Annexe falling under an established C3 use.

4. THE PROPOSAL

- 4.1 The application for a Certificate of Lawful Established Use is made under the following provision:

The Town and Country Planning Act 1990 ("the Act"), s.191(1) provides that:

(1) If any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful;
- (b) any operations which have been carried out in, on, over or under land are lawful; or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

4.2 THE PROPOSED USE

The application is submitted with the following description of development:

The use for which a certificate of lawful use or development is sought, is the change of use of the dwelling known as The Annexe from office use, to a lawful use as a separate, independent residential dwelling house falling under Use Class C3.

STATUTE AND CASE LAW

- 5.1 Planning Guidance and case law has established that the onus is on the applicant to provide sufficient information to support the case for the Certificate, however a local planning authority always needs to co-operate with an applicant who is seeking information.

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- 5.2. If the LPA are provided with information satisfying them of the lawfulness, at the time of the application, of the use, operations or other matter described in the application, or that description as modified by the LPA or a description substituted by them, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.
- 5.3 The relevant test to be applied to the evidence is that of the 'balance of probability' which is the lesser test to the criminal burden of proof.
- 5.4 The case of *F W Gabbitts v SSE and Newham LBC* [1985] JPL 630) has established that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted.
- 5.5. In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

TIME LIMITS

- 5.6. Time limits in relation to the enforcement action referred to above in sections 191 (3)(a) are provided in section 171B:

171B.— Time limits.

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

- 5.7. Therefore, in this case the relevant enforcement time limit is ten years for the change of use of the dwelling from office to C3 dwelling. The application for the certificate must be sufficient to demonstrate that at the date of the application the use had been continuous and ongoing for at least 10 years.

6.0 THE EVIDENCE IN SUPPORT

- 6.1 Having regard to the legislative background for this type of application it is necessary to demonstrate that from the date of application, the change of use has occurred for a continuous period of 10 years in order to become immune from enforcement action. During the 10-year period, occasional lapses are permitted as long as they are proportionate to the overall term. In this case there are minor lapses for changes in tenants and also a period of renovation and upgrade works in accordance with the defects identified in the Prohibition Order. Taking into account the length of time and the nature of the use, it is considered that the minor lapses are reasonable and acceptable in supporting the proposal on the balance of probabilities. Case law has established that periods of vacancy for maintenance and upgrade of a dwelling is acceptable.
- 6.2 The Applicant has provided a sworn statutory declaration which confirms that for the duration of their ownership since 2007, The Annexe has been used as a separate unit of accommodation for tenants falling under a C3 use. This use continues with the occupation of the Annexe by the applicant as his family home. The declaration is supported by an array of tenancy agreements and records. The applicant can provide more examples, but in the first instance it is hoped that the selection would be sufficient to prove the case on the balance of probabilities.
- 6.3 The applicant and his now ex-wife, purchased both dwellings in 2007. Even then, The Annex building had a separate legal title to that of Mercia Lodge. Mercia Lodge falls under Title number LL53782 and the Title number for the Annex is LL260944. The Land Registry details that the division of title took place on the 26th October 2005. This indicates that in terms of land title, the units are very separate and as such independent of each other as legally they can be sold separately.
- 6.4 The Statutory Declaration goes on to confirm that the previous owner rented the two units separately. The applicant continued to rent out rooms in Mercia Lodge and the Annexe separately and as part of divorce arrangements, the applicant's ex-wife in 2015 took over the responsibility for both properties. As part of the split the applicant's ex-wife took over the rental responsibilities of both Mercia Lodge and the Annex and she proceeded to run this business for profit.
- 6.5 In December 2018 an Emergency Prohibition Order was served. This led to a very short period of non-occupation of the Annex as the tenants had to be moved to other accommodation, however the work to The Annex was completed within a few months and in the May of 2019, the applicant moved into The Annex and since then has used the Annexe as his home. The Prohibition Notice was lifted that year as all safety works had been complete.

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- 6.3 The Statutory Declaration, with the exhibited evidence, goes on to confirm that when the applicant purchased the property in 2007, both Mercia Lodge and The Annexe were being used as residential letting units and this was continued as a residential rental business until very recently. The applicant now resides in the Annexe as his home and the declaration confirms that he has always known it as a completely separate dwelling to that of Mercia Lodge with its own domestic curtilage and parking.
- 6.3 The Council is asked to fully take into account the evidence provided with the Statutory Declaration which on the balance of probabilities demonstrates the separate independent use of The Annexe as a dwelling falling under C3, for a continuous, uninterrupted period exceeding 10 years.

7. CONCLUSIONS

- 7.1 The Council is respectfully asked to consider this application and evidence and grant the Certificate as applied for.
- 7.2 Respectfully, evidence has been provided to demonstrate that, on the balance of probability, the site has accommodated 2 separate dwelling houses, for a period far exceeding the required 10 years.
- 7.3 On the balance of probabilities, it is respectfully submitted that from at least 2007 to the date of this application the breach of planning control has been continuous. On this basis enforcement action cannot be taken and the applicants can continue to use The Annexe as a separate planning unit consisting of a C3 dwelling house unimpeded and secure from planning enforcement.
- 7.4 In compliance with Section 191 of the Town and Country Planning Act 1990 (as amended), the LPA is respectfully requested to issue a Certificate of Lawful Use in respect of this change of use.